IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

JUDGE'S ORDER NO.173 OF 2006
IN
SUIT NO.2000 OF 2000

Syndicate Bank Plaintiffs

versus

M/s.Esvee Enterprises & ors. Defendants

Ms.Sushama Satpute i/by M.Dhruva & Co. for plaintiffs.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th July 2006

PC :

1. By this application the plaintiff seeks an opportunity to sale a Flat being Flat No.9, 4th Floor, Building No.B-2, Bachani Nagar Co-op. Housing Society, Malad (E), Mumbai 400 097 more particularly described in Exhibit-E to the plaint to the Recovery Officer, DRT-III, Mumbai by discharging the Court Receiver appointed in respect of this flat by this Court.

2. In the affidavit in support of this Judge's Order/application it is contended that the

plaintiffs have filed an application in the DRT against the sister concern of the defendants herein. The defendant's sister concern offered very same flat as security. The original application is disposed of in favour of plaintiff and a recovery certificate has been granted. In execution of this recovery certificate, the said flat is put up for sale by public auction.

3. However, it is admitted in the affidavit in support that the present suit is pending. The Court Receiver has been appointed by this Court in the present suit.

4. It is apprehending that the flat cannot be sold by DRT without the leave of this Court, that the present application has been moved.

5. In my view, the Court Receiver appointed by this Court cannot be discharged at this stage. The suit is admittedly pending. The orders have gained finality. The defendant before me as also the opponent before the DRT, are distinct parties. The security may be common, but unless and until there is any order passed by this Court permitting the Court Receiver to either sell the property or discharging him, this Judge's

Order/application cannot be granted.

6. it will be for the Recovery officer to take appropriate steps in disposing of the security of the plaintiffs before the DRT and it will be open for him to move the Court Receiver and then the Court Receiver to take appropriate directions. Reserving that liberty and when today no proclamation is issued, there will be no purpose in entertaining this application. It is accordingly dismissed with liberty as above.

(S.C.DHARMADHIKARI, J.)